In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1377

ANNETTE HARTMANN and BENN J. HARTMANN,
PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners sued the United States in the United States District Court for the Central District of California under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.*, seeking to recover damages to their house in excess of $10,000 allegedly caused by sonic booms. After a full trial without a jury, the district court denied petitioners' claims, finding that they had failed to establish either the identity of the aircraft, the negligence of the government or that the damage to their house had been caused by the sonic booms.

On November 26, 1969, the Court of Appeals for the Ninth Circuit affirmed the district court's judgment. Petitioners did not file a timely petition for rehearing, and on February 3, 1970, the court of appeals denied as untimely their motion for an extension of time to seek rehearing. The 90-day period for filing a petition for a writ of certiorari under 28 U.S.C. 2101(c) therefore would have expired on February 24, 1970.

On the latter date, petitioners filed an application for an extension of time in which to file a petition for certiorari and, by order of Mr. Justice Douglas, the time was extended to March 26, 1970. The petition was not filed, however, until March 30, four days after the extended time had expired and was accompanied by an application for a further extension of time within which to file the petition to April 1, 1970.

1. The Court is without jurisdiction to entertain the petition as it was filed out of time. This Court has consistently held that where Congress has specified time limits within which review by this Court must be sought, an application made after the time limit has expired does not confer jurisdiction on the Court. See, *e.g.*, *Department of Banking* v. *Pink*, 317 U.S. 264; *Teague* v. *Regional Commissioner of Customs*, 394 U.S. 977 (grounds for denial of certiorari alluded to in dissent); see also Brief for the United States, pp. 9-13 in *Schacht* v. *United States*, No. 628, this Term, argued March 31, 1970. Similarly, an application for a further extension made after an earlier extension, specifically authorized by

§ 2101(c),[1] has expired, must also fail for want of jurisdiction. The expiration of a period of extension granted pursuant to statute is surely indistinguishable from a jurisdictional viewpoint from the expiration of the original 90-day period specified by the same statute. Furthermore, petitioners' application for a further extension violates the clear mandate of Rule 34(2) of the Rules of this Court, which provides in part:

> Whenever any justice of this court or the clerk is empowered by law or under any provision of these rules to extend the time within which a party may petition for a writ of certiorari * * *, an application seeking such extension must be presented to the clerk within the period sought to be extended. * * *

2. In any event, there is no adequate basis for review by this Court. The detailed findings of fact of the district court, concurred in by the court of appeals, were not clearly erroneous, and were based on a careful analysis of the record and a personal inspection of the damaged property.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1970.

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[1] 28 U.S.C. 2101(c) provides in part that:

> A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

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